STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3315, Complainant,	CASE 9802-U-92-2232
vs.	DECISION 4336 - PECB
SNOHOMISH COUNTY FIRE PROTECTION DISTRICT 3, Respondent.	ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed with the Commission in the above-entitled matter on May 15, 1992. The complaint alleged that, for approximately seven years, the employer had provided a "cost of living" increase to its employees on January 1 of each year; that the fire fighters had organized for the purpose of collective bargaining in July of 1991; that the employer had voluntarily recognized the complainant as the exclusive bargaining representative of its fire fighter employees; that the union had made a demand for bargaining some time prior to December 16, 1991; and that the employer's Board of Fire Commissioners decided on December 16, 1991 not to grant a cost of living increase to the fire fighters, because they were engaged in the bargaining process. The union alleged that the employer's withholding of the "cost of living" increase from bargaining unit employees following their selection of an exclusive bargaining representative was an interference with employee rights and a refusal to bargain.

The complaint was the subject of a preliminary ruling letter issued pursuant to WAC 391-45-110 on June 4, 1992. It was noted that numerous decisions have held that an employer which desires to

initiate some change in wages, hours, or conditions of employment for represented employees must give notice to the exclusive bargaining representative of those employees, and must, upon request, bargain in good faith with that representative. It was further noted that an employer which implements a change in wages, hours, or conditions of employment unilaterally (i.e., without having fulfilled its bargaining obligation) commits a "refusal to bargain" unfair labor practice under RCW 41.56.140(4).[1] Turning to the allegations of this complaint, it was noted that wages are clearly a mandatory subject of bargaining, whether called "cost of living" or by some other term, and that the employer would place itself in peril by unilaterally granting any wage increase. The union was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

On June 12, 1992, the union filed an amended complaint. The facts set forth in the amended complaint were substantially the same as stated in the original complaint. In a letter accompanying its amended complaint, the union indicated that it disagreed with the basic premise of the preliminary ruling letter, inasmuch as it believed the employer to be violating the status quo by failing to conform to a past practice. The union hypothesized that a cause of action would undoubtedly have been found to exist if the employer had rolled back the wages of bargaining unit employees, and it argued that the employer's failure to recognize "a key element" in the ongoing compensation package of each bargaining unit member was no less a violation.

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[1] The preliminary ruling letter also noted that the employees involved in this matter are "uniformed personnel" subject to the interest arbitration procedures of RCW 41.56.430 et seq., which precludes the possibility of a "unilateral change" affecting this bargaining unit.

The case is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. As was the case with the original preliminary ruling in this case, all of the facts alleged in the complaint are assumed to be true and provable for this purpose. The question at hand remains whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

An employer is entitled to act unilaterally with regard to employees who are not represented for the purposes of collective bargaining, and there is no allegation that the employer was under any compulsion to grant another "cost of living" increase to its employees for 1991. The wages of bargaining unit employees became a subject for collective bargaining, and the employer's status quo obligations commenced, as soon as the union became the exclusive bargaining representative of the employees involved here.[2] Once organized, the employees must look to negotiations between their union and the employer for any and all wage increases, not to any further unilateral actions by the employer.

The complainant's arguments about a unilateral "wage rollback" are not persuasive. Such a circumstance would inherently involve a **change** from the status quo which the employer was legally obligated to maintain. Rather than making a change in either direction in the case at hand, the employer is only accused of maintaining the wages of bargaining unit employees at the same level as was in effect when they organized, pending the outcome of negotiations.

The allegations of the complaint and amended complaint fail to state a cause of action.

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[2] Arguably, the employer's "status quo" obligation would have commenced with the filing of a petition for investigation of a question concerning representation with the Commission.

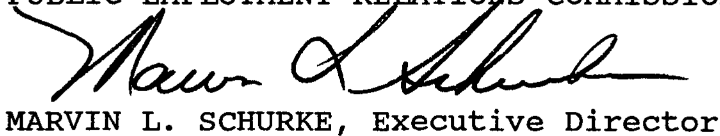
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED.

DATED at Olympia, Washington, this 1st day of April, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.